Advice Memorandum

DATE: December 29, 2003

TO   : Robert H. Miller, Regional Director
         Region 20

FROM   : Barry J. Kearney, Associate General Counsel
         Division of Advice

SUBJECT: Collective Bargaining Organization   536-5050-6775
         of the Hawaii Nurses' Association   536-5075-5017-7900
         (Queen's Medical Center)   536-5075-5033
         Case 37-CB-1679

      This Section 8(b)(1)(A) case involving the expulsion
from membership of an elected Union officer in part because
the officer had protested the Union's handling of
negotiations with the Employer, was submitted for advice on
whether to hold this case in abeyance pending arbitration of
the expulsion.

      We conclude that the Region should dismiss this
allegation because the officer's protest of the Union's
negotiating strategy, in the context of all her other
conduct, amounted to internal union activity protected only
under the LMRDA.[1]

      Charging Party Hackney, a registered nurse, was an
elected Union Chairperson and a member of the Union's
bargaining committee. In August 2003, the Union served
Hackney with a "Formal Notice of Disciplinary Charges" filed
by another member of the Union's bargaining committee and
also the Union's Director. The charges alleged that Hackney
had engaged in activities detrimental to the purposes and
goals of the Union and also had engaged in dual unionism.
Attached to the charges were 16 pages of supporting
documents.

      One of the charges specifically alleged that Hackney
had improperly questioned the Union's negotiating strategy
with the Employer.[2] The charges also alleged that Hackney
had improperly supported another member who disagreed with
current Union policies, including the Union's decision to
terminate its former attorneys. Hackney engaged in numerous

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[1] Office Employees Local 251 (Sandia National Laboratories),
331 NLRB 1417 (2000); cf. Operating Engineers Local 400
(Hilde Constr. Co.), 225 NLRB 596 (1976).

[2] Hackney had sent an e-mail to unit employees protesting,
inter alia, the Union's calling for a strike.

other disagreements with the Union leadership including
opposing the Union's affiliation with the AFL-CIO by
starting a grass-roots movement; submitting a Resolution
entitled "Lack of Confidence" in the incumbent Union
Director, forwarding that Resolution to the Union's House of
Delegates; drafting a by-laws amendment to change the
Union's current structure; and opposing an increase in Union
dues. In September, the Union expelled Hackney for having
engaged in conduct detrimental to the Union. Hackney
appealed her expulsion to an arbitrator pursuant to the
Union's internal arbitration procedure governing impositions
of union discipline.[3]

    We conclude that the Union did not violate the Act when
it expelled Hackney because her overall conduct, including
questioning the Union's bargaining strategy, was internal
union activity solely protected under the LMRDA.

    In Scofield v. NLRB,[4] the Supreme Court stated that the
scope of Section 8(b)(1)(A) and its proviso "leaves a union
free to enforce a properly adopted rule which effects a
legitimate union interest, impairs no policy Congress has
imbedded in the labor laws, and is reasonably enforced
against union members who are free to leave the union and
escape the rule." The Board in Sandia held that internal
union discipline may violate Section 8(b)(1)(A) where the
union's action against the member either: (1) impacts the
employment relationship; (2) impairs access to the Board;
(3) involves union coercion, such as physical violence; or
(4) otherwise impairs policies imbedded in the Act.
Concerning policies embedded in the Act, the Board held that
union retaliation against a member's wholly internal union
activity, which is activity protected solely under the LMRDA
and not under the Act, would no longer be a violation of
8(b)(1)(A).[5]

    The Board in Sandia distinguished Hilde, supra, which
found unlawful the assessment of union fines against members
who attempted to redirect the union's bargaining strategy.
The Board in Sandia noted that Hilde held that questioning a

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[3] The parties currently are in the process of selecting an
arbitrator. Hackney apparently has also filed a complaint
with the Department of Labor alleging Union violations of
Title I of the LMRDA.

[4] 329 U.S. 423, 430 (1969).

[5] The Board thus overruled prior cases to the contrary, such
as Graziano Constr. Co., 195 NLRB 1 (1972). 331 NLRB at
1424.

union's bargaining strategy was "directly related to the process by which terms and conditions of the employment would be settled . . . [so that] there was a clear nexus to the employer-employee relationship." <u>Sandia</u>, supra, 331 NLRB at 1424.[6]

In the instant case, the Union expelled Hackney for engaging a variety of conduct including protesting Union policies and challenging the incumbent Union leadership. One of Hackney's protests had been the incumbent Union officers' negotiating strategy. Assuming that the Union's negotiating strategy had a nexus to Hackney's employment, Hackney did not engage in a single protest of the Union's strategy.[7] Rather, Hackney's questioning of the Union's negotiating strategy was part and parcel of Hackney's overall dissident union activity, involving several other Union policies as well as challenges of the Union's leadership. We therefore conclude that the Union did not violate the Act when it expelled Hackney because her overall conduct, including questioning the incumbent Union leadership's bargaining strategy, amounted to internal union activity protected solely under the LMRDA.

Accordingly, the Region should dismiss this allegation, absent withdrawal.

B.J.K.

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[6] Shortly after deciding <u>Sandia</u>, the Board questioned the continued viability of <u>Hilde</u>. See <u>Local 524, SEIU (Brandeis Univ.)</u>, 332 NLRB 1118, 1124-25 (2000). However, the Board thereafter has cited <u>Hilde</u> as authoritative but distinguishable. See <u>Steelworkers, Local 9292 (Allied Signal)</u>, 336 NLRB 52, 55 (2001).

[7] Cf. <u>Hilde</u>, supra.